Customs Bulletin

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of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80–92)

Corporate Name Change of a Customs Approved Public Gager

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that Superintendence Co., Inc., approved to gage petroleum and petroleum products in all Customs districts (see T.D. 73–8) has changed its corporate name to SGS Control Services, Inc.

Dated: March 20, 1980.

ALFRED G. SCHOLLE,
Acting Director, Office of Regulations and Rulings.

[Published in the Federal Register, Mar. 27, 1980 (45 F.R. 20272)]

(T.D. 80–93)

Customhouse Broker License—Cancellation

Cancellation without prejudice of customhouse broker license 4825

Notice is hereby given that the Commissioner of Customs, on March 19, 1980, pursuant to section 641, Tariff Act of 1930, as amended (19 CFR 111.51(b)), upon the specific request of Thomas P. Cline, Miami, Fla., canceled without prejudice individual customhouse broker's license No. 4825 issued to him on September 13, 1973, for the Customs District of Miami, Fla. The Commissioner's decision is effective as of March 19, 1980.

Dated: March 19, 1980.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

[Published in the Federal Register, Mar. 27, 1980 (45 F.R. 20272)]

(T.D. 80–94)

Synopses of Drawback Decisions

The following are synopses of drawback rates and amendments issued August 18, 1978, to March 13, 1980, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate or amendment approved under section 1313(a) and (b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was forwarded or issued.

Dated: March 24, 1980.

ALFRED G. SCHOLLE,
Director, Carriers, Drawback and Bonds Division.

(A) Company: American Hoist & Derrick Co.
Section 1313(a) articles: Cranes.
Section 1313(a) merchandise: Hydraulic motors, hydraulic valves, and crane truck carriers.
Section 1313(b) articles: Construction equipment, cranes, crawler, truck, rail, pedestal, barge, stiffleg derrick, draglines, gin poles, back hoes, scrap grabbing cranes, magnetic cranes, log loader, compactors, stabilizers, trenchers, and cable hoists.
Section 1313(b) merchandise: Carbody castings, steel plate, and ball, roller, tapered and Rotek triple path roller bearings.
Factories: Bay City, Miss.; St. Paul, Duluth, and Minneapolis, Minn.; Cleveland, Ohio; Fort Wayne, Ind.
Statement signed: April 27, 1979.
Basis of claim: Used in as to operations under section 1313(a); Used in less valuable waste as to carbodies; Appearing in as to steel; and used in as to bearings—under section 1313(b).
Rate forwarded to Regional Commissioner of Customs: New York, June 26, 1979.

(B) Company: American NTN Bearing Manufacturing Corp.
Section 1313(a) articles: Finished steel ball bearings and manufactured parts.
Section 1313(a) merchandise: Steel ball bearing parts; bearing seals of plastic or rubber.

Section 1313(b) articles: Finished steel ball bearings and manufactured parts.
Section 1313(b) merchandise: Steel ball bearing parts; bearing seals of plastic or rubber.
Factory: Schiller Park, Ill.
Statement signed: July 12, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, September 4, 1979.

(C) Company: Berry Citrus Products, Inc.
Section 1313(a) articles: Frozen concentrated orange juice that meets customer specifications.
Section 1313(a) merchandise: Concentrated orange juice for manufacturing.
Section 1313(b) articles: Frozen concentrated orange juice that meets customer specifications.
Section 1313(b) merchandise: Concentrated orange juice for manufacturing.
Factory: La Belle, Fla.
Statement signed: August 16, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Miami, August 30, 1979.

(D) Company: Dataproducts Corp.
Section 1313(a) articles: Line printers and lower level subassemblies.
Section 1313(a) merchandise: Various parts of printers and subassemblies.
Section 1313(b) articles: Line printers and lower level subassemblies.
Section 1313(b) merchandise: Various parts of printers and subassemblies.
Factory: Woodland Hills, Calif.
Statement signed: September 20, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Los Angeles, October 15, 1979.

(E) Company: Eastman Kodak Co.
Section 1313(a) articles: Cameras and other photographic equipment.
Section 1313(a) Merchandise: Screws.
Section 1313(b) articles: Cameras, projectors, flash attachments, microfilming equipment, and other photographic equipment and accessories.
Section 1313(b) merchandise: Various electronic and mechanical

components consisting of capacitors, resistors, inductors, motors, transformers, lenses, and screws.
Factories: Rochester, N.Y. (3).
Statement signed: August 23, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Boston, October 3, 1979.

(F) Company: General Electric Co.
Section 1313(a) articles: Steam turbines and parts thereof.
Section 1313(a) merchandise: Turbine castings, rotor forgings and bearings.
Section 1313(b) articles: Steam turbines and parts thereof.
Section 1313(b) merchandise: Turbine castings and rotor forgings.
Factories: Fitchburg, Mass.; Bangor, Maine.
Statement signed: February 21, 1979.
Basis of claim: Used in, less valuable waste.
Rate forwarded to Regional Commissioner of Customs: New York, May 4, 1979.

(G) Company: Harmon Colors Corp.
Section 1313(a) articles: Color pigments, lakes, toners, and reduced colors.
Section 1313(a) merchandise: Dyestuff and dyestuff intermediates.
Section 1313(b) articles: Color pigments, lakes, toners, and reduced colors.
Section 1313(b) merchandise: Dyestuff and dyestuff intermediates.
Factory: Haledon, N.J.
Statement signed: November 27, 1978.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, February 23, 1979.
Revokes: T.D. 73–88–F, as amended by T.D. 77–244–D; and T.D. 54882–B, as amended by T.D. 55057–C and T.D. 77–244–D.

(H) Company: Jeep Corp.
Section 1313(a) articles: Jeep vehicles, among other things.
Section 1313(a) merchandise: Imported motor vehicle frames and tires, among other things.
Section 1313(b) articles: Passenger automobiles, trucks, and parts thereof.
Section 1313(b) merchandise: Hot and cold rolled steel sheets, galvanized steel sheets, and steel forgings.
Factory: Toledo, Ohio.

Statement signed: November 14, 1978.
Basis of claim: Appearing in.
Amendment issued by Regional Commissioner of Customs: Chicago, December 21, 1978.
Amends: T.D. 55423–A, as amended, to cover additional process under section 1313(a) above.

(I) Company: Jones & Laughlin Steel Corp. (Youngstown Sheet & Tube Co.).
Section 1313(a) articles: Carbon steel plates, hot-rolled coils and sheets, cold-rolled coils and sheets, galvanized coils and sheets, tin plate coils and sheets, tubular products, junior beams, hot- and cold-rolled bars, rods, wire products, and structural channels.
Section 1313(a) merchandise: Carbon steel ingots and slabs.
Section 1313(b) articles: Carbon steel plates, hot-rolled coils and sheets, cold-rolled coils and sheets, galvanized coils and sheets, tin plate coils and sheets, tubular products, junior beams, hot- and cold-rolled bars, rods, wire products, and structural channels.
Section 1313(b) merchandise: Carbon steel ingots and slabs.
Factories: Cleveland and Youngstown, Ohio; Aliquippa and Pittsburgh, Pa.; East Chicago, Ind.; Hennepin, Ill.
Statement signed: April 10, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioners of Customs: New York and Baltimore, May 1, 1979.
Revokes: T.D. 76–328–E.

(J) Company: Libbey-Owens-Ford Co.
Section 1313(a) articles: Ground view windows for airplanes.
Section 1313(a) merchandise: Imported airplane parts (frame castings and guarding profiles for airplane windows).
Section 1313(b) articles: Plate glass sheets, polished on one side; polished plate glass stock sheets; plate glass articles cut to specified sizes for windows, show cases, mirrors, and similar articles, among other things.
Section 1313(b) merchandise: Ground plate glass, ground plate glass stock sheets, polished on one side only, ground and polished plate glass stock sheets, among other things.
Factories: Charleston, W. Va.; Shreveport, La.; East Toledo and Rossford, Ohio; Ottawa, Ill.; Brackenridge, Pa.
Statement signed: July 28, 1978.
Basis of claim: Appearing in.
Amendment issued by Regional Commissioner of Customs: Chicago, August 18, 1978.

Amends: T.D. 54832–K, as amended, to cover a change in name from Libbey-Owens-Ford Glass Co.

(K) Company: Liggett Group Inc.
Section 1313(a) articles: Cigarettes, blended tobaccos, and cut and blended tobaccos.
Section 1313(a) merchandise: Unstemmed cigarette leaf tobacco, oriental or Turkish type tobacco.
Section 1313(b) articles: Cigarettes, blended tobacco, and blended and cut tobaccos.
Section 1313(b) merchandise: Flue-cured scrap tobacco and burley scrap tobacco.
Factory: Durham, N.C.
Statement signed: October 8, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, December 5, 1979.
Revokes: T.D. 45088–D, as amended by 55765–E, 56334–S, 69–240–H, 73–323–D, and 78–276–H.

(L) Company: Massey-Ferguson, Inc.
Section 1313(a) articles: Agricultural and industrial equipment.
Section 1313(a) merchandise: Engines, winches, and other various parts.
Section 1313(b) articles: Agricultural and industrial equipment.
Section 1313(b) merchandise: Hot-rolled steel plate and other various parts.
Factories: Des Moines, Iowa; Detroit, Mich.; Cuyahoga Falls, Ohio.
Statement signed: July 6, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, January 17, 1980.

(M) Company: Meiwa, U.S.A., Inc.
Section 1313(a) articles: Unfinished polyvinyl products.
Section 1313(a) merchandise: Polyvinyl chloride film.
Section 1313(b) articles: Unfinished polyvinyl products.
Section 1313(b) merchandise: Polyvinyl chloride dispersion resin.
Factory: Charlotte, N.C.
Statement signed: December 29, 1978.
Basis of claim: Used in, less valuable waste.
Rate forwarded to Regional Commissioner of Customs: Miami, June 20, 1979.

(N) Company: Micro Design Division of Bell & Howell Co.
Section 1313(a) articles: Microfilm readers and reader printers.

Section 1313(a) merchandise: Microfilm projection lenses, condensor lenses, prisms, lamps.
Section 1313(b) articles: Microfilm readers and reader printers.
Section 1313(b) merchandise: Microfilm projection lenses, condensor lenses, prisms, lamps.
Factory: Hartford, Wis.
Statement signed: January 2, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, February 22, 1980.
Revokes: T.D. 79–155–Q.

(O) Company: Republic Powdered Metals.
Section 1313(a) articles: Asphalt base aluminum roof coatings, aluminum paints, and similar protective coatings containing aluminum paste.
Section 1313(a) merchandise: Aluminum paste, coarse.
Section 1313(b) articles: Asphalt base aluminum roof coatings, aluminum paints, and similar protective coatings containing aluminum paste.
Section 1313(b) merchandise: Aluminum paste, coarse.
Factories: Medina, Ohio; Gilroy, Calif.
Statement signed: December 14, 1978.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, March 29, 1979.
Revokes: T.D. 78–184–T.

(P) Company: R. J. Reynolds Tobacco Co.
Section 1313(a) articles: Cigarettes and blended cigarette tobaccos.
Section 1313(a) merchandise: Oriental tobacco.
Section 1313(b) articles: Cigarettes and blended cigarette tobaccos.
Section 1313(b) merchandise: Flue cured scrap tobacco and burley scrap tobacco.
Factory: Winston-Salem, N.C.
Statement signed: December 3, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Miami, January 11, 1980.

(Q) Company: Rhone-Poulenc Inc.
Section 1313(a) articles: 2-methyl-4-nitro imidazole.
Section 1313(a) merchandise: Methyl imidazole.
Section 1313(b) articles: Dimetronidazole.

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Section 1313(b) merchandise: 2-methyl-4-nitro imidazole.
Factory: New Brunswick, N.J.
Statement signed: January 12, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, April 6, 1979.

(R) Company: Sandvik, Inc.
Section 1313(a) articles: Coated welding electrodes.
Section 1313(a) merchandise: Stainless steel core wire, round wire, welding wire.
Section 1313(b) articles: Coated welding electrodes.
Section 1313(b) merchandise: Stainless steel core wire, round wire, welding wire.
Factory: Waverly, Pa.
Statement signed: November 10, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, February 16, 1979.

(S) Company: Shakespeare Co., Monofilament Division.
Section 1313(a) articles: Nylon 6/6 monofilament sewing thread.
Section 1313(a) merchandise: Nylon pellets.
Section 1313(b) articles: Nylon 6/6 monofilament sewing thread.
Section 1313(b) merchandise: Nylon pellets.
Factory: Columbia, S.C.
Statement signed: June 6, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioners of Customs: New York, Boston, Baltimore, and Miami, August 14, 1979.

(T) Company: Teledyne Firth Sterling Division, Teledyne Industries Inc.
Section 1313(a) articles: Steel products, among other things.
Section 1313(a) merchandise: Ferrotungsten, among other things.
Section 1313(b) articles: Steel products, among other things.
Section 1313(b) merchandise: Ferrotungsten, among other things.
Factories: McKeesport and Trafford, Pa.
Statement signed: May 11, 1979.
Basis of claim: Appearing in.
Amendment issued by Regional Commissioner of Customs: New York, July 18, 1979.
Amends: T.D. 47949–T, as amended, to cover successorship from Firth-Sterling Corp.

(U) Company: Tennant Co.
Section 1313(a) articles: Sweepers, scrubbers, and brush assemblies.
Section 1313(a) merchandise: Ford engines, Perkins engines, double seal ball bearing, nylon filament.
Section 1313(b) articles: Sweepers, scrubbers, and other various articles.
Section 1313(b) merchandise: Hot-rolled steel sheet and plate, cold-rolled steel sheet, stainless steel sheet, nylon filament, ball bearings.
Factories: Minneapolis and Osseo, Minn.
Statement signed: April 18, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, August 30, 1979.

(V) Company: Texaco Inc.
Section 1313(a) articles: TLA–230, a calcium sulfonate surface active agent.
Section 1313(a) merchandise: Calcium sulfonate.
Section 1313(b) articles: Various lubricants and oil additives.
Section 1313(b) Merchandise: TLA–230, a calcium sulfonate surface active agent.
Factory: Port Arthur, Tex.
Statement signed: February 2, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Houston, February 22, 1980.
Revokes: T.D. 70–189–D and T.D. 75–277–L.

(W) Company: Thomas International Corp.
Section 1313(a) articles: Electronic organs.
Section 1313(a) merchandise: Various components.
Section 1313(b) articles: Electronic organs.
Section 1313(b) merchandise: Various components.
Factory: Sepulveda, Calif.
Statement signed: June 4, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Los Angeles, January 9, 1980.

(X) Company: Waltham Watch Co.
Section 1313(a) articles: Various watches and watch heads.
Section 1313(a) merchandise: Various watch movements, cases, heads, and bracelets.
Section 1313(b) articles: Various watches and watch heads.

Section 1313(b) merchandise: Various watch movements, cases, heads, and bracelets.
Factories: Chicago, Ill.; Bridgeport, Conn.
Statement signed: July 5, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioners of Customs: Chicago, New York, and Boston, March 13, 1980.
Revokes: T.D. 55378–M as amended by T.D. 70–189–F and T.D. 73–26–D.

(Y) Company: A. Wimpfheimer & Brother, Inc.
Section 1313(a) articles: Velvet cloth.
Section 1313(a) merchandise: Rayon yarn.
Section 1313(b) articles: Velvet cloth.
Section 1313(b) merchandise: Rayon yarn.
Factory: Stonington, Conn.
Statement signed: April 30, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Boston, May 30, 1979.

(Z) Company: Xerox Corp.
Section 1313(a) articles: Reprographic machine and peripheral equipment and related tools, parts and assemblies thereof; components and reprographic supplies.
Section 1313(a) merchandise: Castings, tools, blanks, parts, assemblies, subunits, accessories and supplies.
Section 1313(b) articles: Reprographic machine and peripheral equipment and related tools, parts and assemblies thereof, components and reprographic supplies.
Section 1313(b) merchandise: Castings, tools, blanks, parts, assemblies, subunits, accessories and supplies.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: February 8, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Boston, March 11, 1980.

(T.D. 80–95)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
March 10–14, 1980	$0.0214
People's Republic of China yuan:	
March 10, 1980	$0.652869
March 11–13, 1980	.650280
March 14, 1980	.646998
Hong Kong dollar:	
March 10, 1980	$0.201309
March 11, 1980	.200844
March 12, 1980	.200421
March 13, 1980	.200080
March 14, 1980	.199601
Iran rial:	
March 10–14, 1680	Not available
Philippines peso:	
March 10–14, 1980	$0.1350
Singapore dollar:	
March 10, 1980	$0.458295
March 11, 1980	.455270
March 12, 1980	.455996
March 13, 1980	.454442
March 14, 1980	.453001
Thailand Baht (tical):	
March 10–14, 1980	$0.0489
Venezuela bolivar:	
March 10–14, 1980	$0.2329

(LIQ–3–TRODE)

Dated: March 26, 1980.

G. SCOTT SHREVE
(For Chester R. Krayton,
Director, Duty Assessment Division).

(T.D. 80–96)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80–28 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:	
March 13, 1980	$0.076702
March 14, 1980	.076249
Belgium franc:	
March 10, 1980	$0.034002
March 11, 1980	.033990
March 12, 1980	.034048
March 13, 1980	.033807
March 14, 1980	.033490
Denmark krone:	
March 10, 1980	$0.176929
March 11, 1980	.176741
March 12, 1980	.177179
March 13, 1980	.175762
March 14, 1980	.174672
France franc:	
March 10, 1980	$0.236435
March 11, 1980	.235710
March 12, 1980	.236518
March 13, 1980	.235266
March 14, 1980	.233891
Germany deutsche mark:	
March 10, 1980	$0.552639
March 11, 1980	.551876
March 12, 1980	.553220
March 13, 1980	.548998
March 14, 1980	.545554

Ireland pound:	
March 10, 1980	$2.0400
March 11, 1980	2.0415
March 12, 1980	2.0420
March 13, 1980	2.0280
March 14, 1980	2.0125
Italy lira:	
March 13, 1980	$0.001182
March 14, 1980	.001173
Netherlands guilder:	
March 13, 1980	$0.500250
March 14, 1980	.497265
Switzerland franc:	
March 10, 1980	$0.576369
March 11, 1980	.576535
March 12, 1980	.578202
March 13, 1980	.573394
March 14, 1980	.570125

(LIQ-3-TRODE)

Dated: March 26, 1980.

G. SCOTT SHREVE
(For Chester R. Krayton,
Director, Duty Assessment Division).

U.S. Customs Service

General Notice

(19 CFR Part 152)

Valuation of Imported Merchandise for Customs Purposes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to enable the Customs Service (Customs) to implement and administer the provisions of title II of Public Law 96–39, the "Trade Agreements Act of 1979," relating to the valuation of imported merchandise for Customs purposes.

The more significant changes are:

1. To eliminate section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1402), the basis for appraising final list articles.

2. To eliminate the American selling price basis for valuation.

3. To provide five bases—one primary and four secondary—for determining customs value:

a. Transaction value of the imported merchandise (the primary basis);

b. Transaction value of identical merchandise;

c. Transaction value of similar merchandise;

d. Deductive value; and

e. Computed value.

4. To provide that if Customs rejects the transaction value in a particular instance, the importer will be notified of the rejection, receive an explanation of the action, and be given 20 days in which to reply if in disagreement.

5. To provide that Customs, upon written request, shall furnish an importer with a written explanation of how the customs value of the imported merchandise was determined.

6. To provide that information submitted by an importer, buyer, or producer regarding the valuation of merchandise will not be rejected on the basis of the accounting method used to prepare the

information if the preparation was in accordance with "generally accepted accounting principles."

The proposed amendments are considered to be significant.

DATE: Comments must be received on or before (60 days after publication in the Federal Register).

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas Lobred, 202–566–2938 or Richard Rosettie, 202–566–8235, Office of Commercial Operations.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public Law 96–39 (93 Stat. 144), the Trade Agreements Act of 1979, approved July 26, 1979 (the act), incorporates into U.S. law the trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations (MTN) and transmitted to the Congress by the President on June 19, 1979.

Title II of the act, Customs valuation, implements the agreement on implemention of article VII of the General Agreement on Tariffs and Trade (the agreement) relating to customs valuation. Title II makes significant changes in the laws administered by the Customs Service relating to the valuation ot imported merchandise. This document proposes to amend the Customs Regulations to implement and administer the provisions of title II.

EFFECTIVE DATES

1. The effective dates for implementing the provisions of title II (the new value law in this document) have not been determined.

Pursuant to section 2(b)(2) of the act, title II would apply between the United States and another country only if that country has accepted the agreement and the President determines it should not otherwise be denied the benefits of the agreement with respect to the United States because that country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 126(c), Trade Act of 1974 (19 U.S.C. 2136(c)), to the United States. However, pursuant to section 2(b) (3) of the act, the President may not accept the agreement with respect to another country unless he determines that, with certain exceptions, each "major industrial country," as defined in section 126(d), Trade Act of 1974 (19 U.S.C. 2136(d)), is accepting the agreement.

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Under section 204 of title II, the amendments made by title II will take effect on January 1, 1981, if the agreement enters into force with respect to the United States, or on the date after January 1, 1981, on which the agreement enters into force, subject to two exceptions:

a. Section 204(a)(2) provides that if the President determines before January 1, 1981, that the European Economic Community (EEC) (and the other major industrial countries (see sec. 2(b)(3) of the act)) have accepted the obligations of the agreement with respect to the United States, and each member state of the EEC has implemented the agreement under its laws, the President shall announce by proclamation such determination. The amendments made by title II, except those relating to certain rubber footwear, would take effect on the date specified in the proclamation, but not before July 1, 1980.

b. Section 204(c) provides that the amendments made by section 223(b), relating to certain rubber footwear, will take effect on July 1, 1981, or the date on which the agreement enters into force with respect to the United States, whichever is later.

2. Implementation of the new value law will neither repeal nor amend automatically sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402) (the current value law in this document), with regard to merchandise exported to the United States before the respective effective dates. When the applicable effective dates have been determined, the new value law will be applicable to merchandise exported to the United States on or after the applicable effective date, and the value will be determined in accordance with section 402, Tariff Act of 1930, as amended by section 201 of the act.

However, the current value law, sections 402 and 402a, Tariff Act of 1930, as amended, will apply to merchandise exported to the United States before the applicable effective date. This would include merchandise in a Customs-bonded warehouse, in a foreign-trade zone, or in international transit to the United States before the applicable effective date.

Because of the necessity to continue to administer the current value law for an indefinite period while it also implements the new value law, Customs proposes to amend its regulations to provide for a new subpart relating to the new value law while retaining the regulations relating to the current value law.

CURRENT VALUE LAW

The current U.S. valuation system consists of two separate laws, sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). There are nine bases for determining Customs value under these laws.

Five bases for determining value were established in the Tariff Act of 1930, before its amendment by the Customs Simplification Act of 1956. These bases, set forth in section 402a, are export value, foreign value, U.S. value, cost of production, and American selling price. Articles which are valued under these bases are listed in T.D. 54521 and are called final list articles. Under section 402a, valuation is based upon an article's export value or foreign value, whichever is higher. If neither export nor foreign value can be determined, valuation then is determined on the basis of the U.S. value. If U.S. value cannot be determined, a cost of production basis is used. American selling price as a basis for value under section 402a is discussed below.

1. Export value essentially is the price at which merchandise is freely offered for sale to all purchasers in the usual wholesale quantities in the principal markets of the exporting country for export to the United States.

2. Foreign value essentially is the price of merchandise for sale in the home market of the country of exportation which is the same as or similar to imported merchandise and which is freely offered for sale in the country of exportation to all purchasers in the usual wholesale quantities.

3. U.S. value is essentially the freely offered resale price in the United States of merchandise which is the same as or similar to the imported merchandise, with deductions from that price for duty, cost of transportation and insurance, and other expenses from the place of shipment to the place of delivery, and a commission or profit and general expenses.

4. Cost of production is the aggregate of the costs of producing the merchandise and placing it in condition, packed ready for shipment to the United States, plus an amount for general expenses and profit.

There are four bases for determining value under section 402, established by the Customs Simplification Act of 1956—export value, U.S. value, constructed value, and American selling price. Under section 402, valuation is based upon an article's export value, if it can be determined. If not, U.S. value is used. If U.S. value cannot be determined, constructed value is used. American selling price as a basis for value under section 402 is discussed below.

1. Export value essentially is the price at the time of exportation at which merchandise the same as or similar to imported merchandise is freely sold or offered for sale in the usual wholesale quantities in the exporting country for export to the United States.

2. U.S. value under section 402 is similar to U.S. value under section 402a, except that there are no statutory maximums for commissions or for profit and general expenses.

3. Constructed value is similar to cost of production under section

402a, except that there are no statutory minimums for general expenses and profit.

AMERICAN SELLING PRICE

American selling price (ASP), as used in both sections 402 and 402a, essentially is the selling price in the United States of a domestic article which is like or similar to the imported article. ASP is used for specific articles. These are benzenoid chemicals, certain plastic or rubber-soled footwear, canned clams, and certain gloves (see sec. 152.24, Customs Regulations (19 CFR 152.24)).

NEW VALUE LAW

Section 201 of title II repeals section 402a of the Tariff Act of 1930, as amended.

Section 201 also amends section 402 to provide for five bases for determining value presented in a hierarchical manner. The first and primary basis is transaction value. If transaction value cannot be determined, or if determined, cannot be used, then the second basis, the transaction value of identical merchandise, is used. If transaction value of identical merchandise cannot be determined, then transaction value of similar merchandise is used. If transaction value of similar merchandise cannot be determined, then deductive value is used. If deductive value cannot be determined, then computed value is used.

The act also provides that if none of the five bases can be use, then a value will be derived from one of those bases, reasonably adjusted.

The act further provides, with respect to the order of priority, that the importer may elect to have the merchandise appraised on the basis of computed value, rather than deductive value. However, if computed value cannot be determined, the merchandise will be appraised on the basis of deductive value. If deductive value cannot be determined, the merchandise will be appraised on the basis of one of the five bases, reasonably adjusted.

SECTION 500, TARIFF ACT OF 1930

Section 500(a) of the Tariff Act of 1930 has been amended by section 202(a)(4) of the act to provide that amended section 402 will be the basis for ascertaining the value of merchandise exported to the United States after the effective dates of the act previously referred to. The legislative history states that the Customs officer shall appraise merchandise under section 402, and that section 500 is not a separate basis of valuation but is used to permit Customs to consider the best evidence available in appraising merchandise.

TRANSACTION VALUE

New section 402(b) provides essentially that the transaction value of imported merchandise is the price actually paid or payable, as

defined in section 402(b)(4)(A), for the merchandise when sold for exportation to the United States. The price actually paid or payable is the total payment, less any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

To this payment may be added amounts equal to (1) packing costs incurred by the buyer; (2) any selling commission incurred by the buyer; (3) any assist as defined in section 402(h)(1); (4) any royalty or license fee the buyer is required to pay as a condition of sale of the merchandise to him; and (5) proceeds of a subsequent resale, disposal, or use of the imported merchandise accruing to the seller. These additions, and no others, may be made to the price actually paid or payable only if they are not otherwise included and are based upon sufficient information (as defined in sec. 402(h)(5)). If additions cannot be made on the basis of such information, the transaction value cannot be determined.

Certain items will not be included in the transaction value if identified separately from the price actually paid or payable and from the items specified in section 402(b)(1). New section 402(b)(3) provides that these items are (1) any reasonable cost or charge incurred for the construction, erection, assembly, or maintenance of, or technical assistance provided with respect to, the merchandise after its importation; (2) any reasonable cost or charge for the transportation of the merchandise after its importation; and (3) customs duties and other Federal taxes payable on the merchandise by reason of its importation.

New section 402(b)(2) sets forth those factors which may lead to a rejection of transaction value. These factors include: (1) Certain restrictions on the disposition or use of the imported merchandise other than those which are imposed or required by law, which limit the geographical area of resale, or which do not substantially affect the value of the merchandise; (2) conditions or considerations attaching to the sale or price of the imported merchandise for which a value cannot be determined with respect to the imported merchandise; (3) cases where proceeds from a subsequent resale, disposal, or use of the imported merchandise accrue to the seller, and an appropriate addition cannot be made to the price paid or payable; and (4) cases where the buyer and seller are related, as defined in section 402(g)(1), and the transaction value is not acceptable.

New section 402(b)(4)(B) provides that any rebate of, or other decrease in, the price actually paid or payable that is made or other-

wise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining transaction value.

TRANSACTION VALUE OF IDENTICAL MERCHANDISE AND SIMILAR MERCHANDISE

Section 402(c) provides that the transaction value of identical merchandise is the previously accepted transaction value of imported merchandise identical to that being appraised, adjusted if appropriate for commercial and quantity levels, sold for export to the United States and exported at or about the same time as the merchandise being appraised. The transaction value of similar merchandise is the previously accepted transaction value of imported merchandise similar to that being appraised, adjusted if appropriate for commercial and quantity levels, sold for export to the United States, and exported at or about the same time as the merchandise being appraised. The terms "identical merchandise" and "similar merchandise" are defined in section 402(h).

DEDUCTIVE VALUE

Section 402(d) provides that deductive value will be based upon one of three appropriately adjusted prices depending upon when and in what condition the imported merchandise is sold to unrelated persons in the United States. Sales to unrelated persons in the United States are the only sales which may be used in determining deductive value.

1. If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

2. If the merchandise concerned is sold in the condition as imported, but is not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

3. If the merchandise concerned is not sold in the condition as imported before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. The importer must specifically elect to use this "further processing" option, and notify the Customs officer concerned of that election.

The unit price determined then will be reduced by an amount equal to:

1. Commissions paid or agreed to be paid, or additions usually made for profit and general expenses, in connection with sales in the United States of imported merchandise of the same class or kind as the merchandise being appraised;

2. Actual costs and associated costs of transportation and insurance incurred with respect to international shipment of the merchandise;

3. Usual costs and associated costs of transportation and insurance incurred within the United States with respect to such merchandise;

4. Customs duties and other Federal taxes imposed on the merchandise by reason of its importation, and Federal excise taxes on the merchandise for which vendors in the United States are ordinarily liable; and

5. In the case of a price determined under the "further processing" method, the value added by that processing after importation into the United States.

The deduction made for profit and general expenses must be based upon the importer's profit and general expenses, unless they are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind.

For purposes of determining deductive value, any sale to a person who supplies any assist for use in the production or sale for export of the merchandise will be disregarded.

COMPUTED VALUE

Section 402(e) provides that computed value is the sum of:

1. The cost or value of the materials and the fabrication and other processing employed in the production of the imported merchandise;

2. An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

3. Any assist, if not included in paragraph (1) or (2) above; and

4. The packing costs.

The amount for profit and general expenses included in the computed value will be based upon the producer's profit and expenses, unless those figures are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation.

GENERAL DISCUSSION

ASSISTS

An assist is an item or service supplied directly or indirectly free of charge or at a reduced cost for use in connection with the production or the sale for export to the United States of imported merchandise.

Whereas under the current value law, the existence of an assist requires appraisement under a secondary valuation basis, the new value law provides for the addition of the value of an assist directly to the price to arrive at transaction value. Under the current practice, an assist generally is dutiable regardless of who furnishes the assist. Under the act, an assist is dutiable only if furnished directly or indirectly by the buyer of the imported merchandise. Under current practice, certain assists such as engineering and design work, wherever undertaken, are dutiable. Under the act, as it relates to transaction value, the only assists of this type that are dutiable are engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States. However, if service or work is performed outside the United States by a U.S. domiciliary who is acting as an employee or agent of the buyer, and the work or service is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken in the United States, the service or work is not treated as an assist.

The concept of an assist is relevant in the following circumstances: (1) as an addition to the price actually paid or payable in transaction value, (2) as an element comprising computed value, or (3) as a factor in determining the suitability of deductive value as a basis of value.

ROYALTY OR LICENSE FEE

The addition of an amount for a royalty or license fee to the price actually paid or payable for the imported merchandise in determining transaction value generally follows current practice. However, certain elements called "royalties" may or may not fall within the scope of section 402(b)(1)(D) or section 402(b)(1)(E), relating to proceeds of any subsequent resale, disposal, or use of the imported merchandise accruing to the seller.

SUFFICIENT INFORMATION

Under section 402(h)(5), "sufficient information" means information that establishes the accuracy of:

1. Any amount:

   Added to the price actually paid or payable, in determining transaction value,

   Deducted as profit or general expenses or value from further processing, in determining deductive value, or

   Added as profit or general expenses, in determining computed value.

2. Any difference taken into account in connection with sales between related persons, in determining transaction value, or

3. Any adjustment made in determining the transaction value of identical or similar merchandise.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

Under section 402(g)(3), information submitted by an importer, buyer, or producer concerning the appraisement of merchandise may not be rejected by Customs solely on the basis of the accounting method used to prepare the information if the preparation was in accordance with "generally accepted accounting principles." This term is defined to mean any generally recognized consensus or substantial authoritative support regarding:

Which economic resources and obligations should be recorded as assets and liabilities,

Which changes in assets and liabilities should be recorded,

How the assets and liabilities and changes in them should be measured,

What information should be disclosed and how it should be disclosed, and

Which financial statement should be prepared.

RELATED PERSONS

Under section 402(b)(2)(B), two alternative methods are available to determine whether transaction value may be acceptable if the buyer and seller of imported merchandise are related. If an examination of the circumstances of sale of the imported merchandise indicates that the relationship did not influence the price, the transaction value may be accepted without further inquiry provided all other conditions are met. The transaction value of the imported merchandise also may be accepted if the transaction value "closely approximates" one of the following test values:

1. The transaction value of identical or similar merchandise in sales to unrelated buyers in the United States;

2. The deductive value or computed value of identical or similar merchandise; or

3. The transaction value in sales to unrelated buyers in the United States of merchandise that is identical to the imported merchandise except for having been produced in a different country.

Under the current law, the only standard that may be used to determine the acceptability of related party transactions is whether the related-party price "fairly reflects the market value."

UNACCEPTABLE BASES OF APPRAISEMENT

Under section 402(f)(2), imported merchandise may not be appraised on the basis of:

1. The selling price in the United States of merchandise produced in the United States;

2. A system that provides for appraisement of imported merchandise at the higher of two alternative values;

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3. The price of merchandise in the domestic market of the country of exportation;

4. A cost of production, other than a computed value for merchandise that is identical or similar to the merchandise being appraised;

5. The price of merchandise for export to a country other than the United States;

6. Minimum values for appraisement; or

7. Arbitrary or fictitious values.

ANTIDUMPING DUTIES AND COUNTERVAILING DUTIES

The statutory changes made to section 402, Tariff Act of 1930, as amended, and the regulatory changes proposed under that section do not change or affect those separate provisions of U.S. law that set forth how imported merchandise is to be appraised for the purpose of levying antidumping or countervailing duties.

NOTICE OF VALUE DETERMINATION

Section 402(a)(3) provides that upon written request by the importer, and subject to the provisions of law regarding the disclosure of information, Customs will provide the importer with a reasonable and concise written explanation of how the Customs value of the merchandise was determined.

DISCUSSION OF PROPOSED AMENDMENTS

Accordingly, to reflect the statutory changes made by title II of the act, it is proposed to amend part 152, Customs Regulations (19 CFR part 152), by adding a new section 152.20 to subpart C and a new subpart E, entitled "Valuation of Merchandise," divided into nine sections, as described below:

NEW SECTION 152.20 OF SUBPART C—APPRAISEMENT

Proposed section 152.101(a), discussed below, would provide that the Customs value of merchandise exported to the United States after the effective dates of title II of the act will be appraised under the provisions of proposed subpart E, which implements the new value law. Therefore, proposed section 152.20 would be added to subpart C, "Appraisement," to make clear that merchandise exported to the United States before the effective dates of title II will continue to be appraised under the current value law.

NEW SUBPART E—VALUATION OF MERCHANDISE

1. Proposed section 152.100 would state that the interpretative notes set forth in subpart E have been derived from information contained in the statement of administrative action relating to Customs valuation, submitted to and approved by Congress along with

the act, and will have the force and effect of regulations issued under this subpart.

2. Proposed section 152.101(a) would provide that the Customs value of merchandise exported to the United States on or after the effective dates of title II of the act will be determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201 of the act.

Proposed section 152.101(b) would provide that imported merchandise will be appraised on the basis, and in the order, of the following:

a. Transaction value provided for in section 152.103;

b. Transaction value of identical merchandise provided for in section 152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in section 152.103(j);

c. Transaction value of similar merchandise provided for in section 152.104, if the transaction value of identical merchandise cannot be determined;

d. Deductive value provided for in section 152.105, if the transaction value of similar merchandise cannot be determined;

e. Computed value provided for in section 152.106, if deductive value cannot be determined; or

f. The value provided for in section 152.107, if the computed value cannot be determined.

Proposed section 152.101(c) would set forth the procedure whereby the importer may request, at the time the entry summary is filed, that computed value be used before deductive value to appraise imported merchandise.

Proposed section 152.101(d) would provide the procedure whereby the district director shall provide a reasonable and concise written explanation of how the Customs value of the merchandise was determined.

3. Proposed section 152.102 would define the following terms:

a. Assist,

b. Commission (buying or selling),

c. Generally accepted accounting principles,

d. Identical merchandise,

e. Packing costs,

f. Price actually paid or payable,

g. Related persons,

h. Same class or kind,

i. Similar merchandise,

j. Sufficient information, and

k. Unit price in greatest quantity.

4. Proposed section 152.103 would discuss transaction value. Paragraph (a) would discuss price actually paid or payable and provide examples. Paragraph (b) would discuss the additions to the price actually paid or payable for the imported merchandise, and paragraph (c) would provide that additions to the price actually paid or payable will be made only when there is information sufficient to establish the accuracy of the additions and the extent to which they were not included in the price. An interpretative note would be provided.

Paragraph (d) would discuss assists and provide examples, and paragraph (e) would discuss the apportionment of the value of assists and provide an interpretative note.

Paragraph (f) would discuss royalties or license fees and provide an example, and paragraph (g) would discuss proceeds of subsequent resale and provide an example. Paragraph (h) would discuss right to reproduce and provide an example.

Paragraph (i) would discuss the exclusions from transaction value, and paragraph (j) would provide the limitations on the use of transaction value.

Paragraph (k) would discuss restrictions and conditions on sale and provide interpretative notes. Paragraph (l) would discuss related buyer and seller and provide interpretative notes and examples.

Paragraph (m) would provide that when Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district director shall inform the importer of the grounds for the rejection.

5. Proposed section 152.104 would discuss the transaction value of identical merchandise and similar merchandise. Paragraph (a) would set forth a general discussion on determining the value under this section. Paragraph (b) would provide that minor differences in appearance will not preclude otherwise conforming merchandise from being considered identical. Paragraph (c) would discuss factors considered to determine whether merchandise is similar. Paragraph (d) would discuss "commercial level and quantity," and paragraph (e) would discuss "adjustments" for identical and similar merchandise and provide an interpretative note.

6. Proposed section 152.105 would discuss "deductive value." Paragraph (a) would discuss "merchandise concerned," and paragraph (b) would discuss "merchandise of the same class or kind." Paragraph (c) would set forth the three variables for determining the prices which would be appropriate for determining deductive value. The regulations would provide that the importer must make his election to use the further processing method at the time of filing the entry summary.

Paragraph (d) would discuss "deductions from price" determined under section 152.105(c). Paragraph (e) would discuss the special

rules relating to profit and general expenses. Paragraph (f) would provide that the price determined under section 152.105(c) will be increased by an amount equal to the packing costs incurred by the importer.

Paragraph (g) would provide that for purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

Paragraph (h) would discuss "unit price in greatest aggregate quantity" and provide three interpretative notes. Paragraph (i) would discuss "further processing" and provide an example.

7. Proposed section 152.106 would discuss "computed value." Paragraph (a) would provide the elements comprising computed value, and paragraph (b) would discuss special rules relating to proposed section 152.106(a). Paragraph (c) would discuss "profit and general expenses" and provide interpretative notes.

Paragraph (d) would discuss "assists and packing costs," and paragraph (e) would discuss "merchandise of the same class or kind" and provide an example. Paragraph (f) would discuss "availability of information."

8. Proposed section 152.107 would discuss how Customs value is to be derived if the other value bases cannot be determined or used. Paragraph (a) would provide that if the value of imported merchandise cannot be determined or used under proposed sections 152.103 through 152.106, the merchandise will be appraised on the basis of a value that is derived from the bases set forth in those sections, with the methods reasonably adjusted to the extent necessary to arrive at a value.

Paragraph (b) would discuss "identical merchandise" and "similar merchandise." Paragraph (c) would provide that the "90 days" requirement relating to deductive value for the sale of merchandise may be administered flexibly, and would provide an example.

9. Proposed section 152.108 would provide that imported merchandise may not be appraised on the basis of the items listed.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); section 624, 46 Stat. 759 (19 U.S.C. 1624); and title II, Public Law 96–39 (July 26, 1979).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b) Customs Regulations (19 CFR 103.8(b)), during regular business hours at the

Regulations and Research Division, headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

Customs specifically solicits comments on (1) proposed section 152.101(c), relating to the importer's requesting the application of computed value before deductive value at the time the entry summary is filed; and (2) proposed section 152.105(c)(3), relating to the election of the importer to use the "further processing method" at the time of filing the entry summary.

DRAFTING INFORMATION

The principal authors of this document were Todd J. Schneider and Charles D. Ressin, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS

It is proposed to amend part 152, Customs Regulations (19 CFR part 152), in the following manner:

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

SUBPART C—APPRAISEMENT

It is proposed to add a new section 152.20 to read as follows:

152.20 Effective date

The value for appraisement of merchandise exported to the United States before (the effective dates of title II of Public Law 96–39) will be determined in accordance with this subpart.

SUBPART E—VALUATION OF MERCHANDISE

It is proposed to add a new subpart E, "Valuation of Merchandise," to read as follows:

152.100 Interpretative notes

The interpretative notes set forth in this subpart have been derived from information contained in the Statement of Administrative Action relating to Customs valuation, submitted to and approved by Congress along with the Trade Agreements Act of 1979 (Public Law 96–39), and will have the force and effect of regulations issued under this subpart.

152.101 Basis of appraisement

(a) *Effective date.*—The value for appraisement of merchandise exported to the United States on or after (the effective dates of title II of Public Law 96–39) will be determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979.

(b) *Methods.*—Imported merchandise will be appraised on the basis, and in the order, of the following:

(1) The transaction value provided for in section 152.103;

(2) The transaction value of identical merchandise provided for in section 152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in section 152.103(j);

(3) The transaction value of similar merchandise provided for in section 152.104, if the transaction value of identical merchandise cannot be determined;

(4) The deductive value provided for in section 152.105, if the transaction value of similar merchandise cannot be determined;

(5) The computed value provided for in section 152.106, if the deductive value cannot be determined; or

(6) The value provided for in section 152.107, if the computed value cannot be determined.

(c) *Importer's option.*—The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with the district director (see sec. 141.0a(b) of this chapter). If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method, the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in section 152.107.

(d) *Explanation to importer.*—Upon receipt of a written request from the importer within 90 days of liquidation, the district director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined. The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5. U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 522a), or any other statute (see part 103 of this chapter).

152.102 Definitions

As used in this subpart, the following terms will have the meanings indicated:

(a) *Assist.*—(1) "Assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(2) No service or work to which subsection (1)(iv) applies will be treated as an assist if the service or work—

(i) Is performed by an individual domiciled within the United States;

(ii) Is performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; and

(iii) Is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(3) The following apply in determining the value of assists described in subsection (1)(iv)—

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value added outside the United States.

(iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(b) *Commission.*—"Buying commission" ordinarily means a fee paid by the buyer to an agent for the service of representing the buyer abroad in the purchase of the merchandise being appraised.

(2) "Selling commission" means any commission incurred by the buyer other than a buying commission.

(c) *Generally accepted accounting principles.*—(1) "Generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(i) Which economic resources and obligations should be recorded as assets and liabilities;

(ii) Which changes in assets and liabilities should be recorded;

(iii) How the assets and liabilities and changes in them should be measured;

(iv) What information should be disclosed and how it should be disclosed; and

(v) Which financial statements should be prepared.

(2) The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported merchandise is sought to be established.

(3) Information submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

(d) *Identical merchandise.*—"Identical merchandise" means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised. If identical merchandise cannot be found (or for purposes of related buyer and seller transactions (see sec. 152.103(j)(2)(i)(A)), regardless of whether identical merchandise can be found), merchandise identical in all respects to, and produced in the same country as, but not produced by the same person as, the merchandise being appraised, may be treated as identical merchandise. Identical merchandise does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(e) *Packing costs.*—"Packing costs" means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(f) *Price actually paid or payable.*—"Price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(g) *Related persons.*—"Related persons" means: (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization, and that organization.

(3) An officer or director of an organization and an officer or director

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of another organization, if each individual also is an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization, and that organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(h) *Same class or kind.*—"Merchandise of the same class or kind" mean merchandise (including, but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

(i) *Similar merchandise.*—"Similar merchandise" means merchandise produced in the same country and by the same person as the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised. If similar merchandise cannot be found (or for purposes of related buyer and seller transactions (see sec. 152.103(j)(2)(i)(A)), regardless of whether similar merchandise can be found), merchandise produced in the same country as, but not produced by the same person as, the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised, may be treated as "similar merchandise". "Similar merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design, work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(j) *Sufficient information.*—"Sufficient information" means information that establishes the accuracy of:

(1) Any amount—

(i) Added under section 152.103(b) to the price actually paid or payable,

(ii) Deducted under section 152.105(d) as profit or general expenses or value from further processing, or

(iii) Added under section 152.106(b) as profit or general expenses; or

(2) Any difference taken into account under section 152.103(j)(2)(iv); or

(3) Any adjustment made under section 152.104(d).

(k) *Unit price in greatest aggregate quantity.*—"Unit price at which merchandise is sold in the greatest aggregate quantity" means the

unit price at which the "merchandise concerned" is sold to unrelated persons at the first commercial level after importation (in cases to which secs. 152.105(c) (1) and (2) apply), or after further processing (in cases to which sec. 152.105(c)(3) applies), at which the sales take place in a total volume greater than the total volume sold at any other unit price and sufficient to establish the unit price.

152.103 Transaction value

(a) *Price actually paid or payable.* (1) *General.*—In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly.

(2) *Indirect payment.*—An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in section 152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

(3) *Assembled merchandise.*—The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

(4) *Rebate.*—Any rebate of, or other decrease in, the price actually paid or payable made or otherwise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining the transaction value under section 152.103(b).

Example 1.—In a transaction with foreign company X, a U.S. firm pays company X $10,000 for a shipment of meat products, packed ready for shipment to the United States. No selling commission, assist, royalty, or license fee is involved. Company X is not related to the U.S. purchaser and imposes no condition or limitation on the buyer.

The customs value of the imported meat products is $10,000—the transaction value of the imported merchandise.

Example 2.—A foreign shipper sold merchandise at $100 per unit to a U.S. importer. Subsequently, the foreign shipper increased its price to $110 per unit. The merchandise was exported after the effective date of the price increase. The invoice price of $100 was the price originally agreed upon and the price the U.S. importer actually paid for the merchandise.

How should the merchandise be appraised?

Actual transaction value based on the price actually paid or payable.

Example 3.—A foreign shipper sells to U.S. wholesalers at one price and to U.S. retailers at a higher price. The shipment undergoing appraisement is a shipment to a U.S. retailer. There are continuing shipments of identical and similar merchandise to U.S. wholesalers.

How should the merchandise be appraised?

Actual transaction value based on the price actually paid or payable by the retailer.

Example 4.—Company X in the United States pays $2,000 to Y toy factory abroad for a shipment of toys. The $2,000 consists of $1,850 for the toys and $150 for ocean freight and insurance. Y toy factory would have charged company X $2,200 for the toys; however, because Y owed company X $350, Y charged only $1,850 for the toys. What is the transaction value?

The transaction value of the imported merchandise is $2,200, that is, the sum of the $1,850 plus the $350 indirect payment. Because the transaction value excludes c.i.f. charges, the $150 ocean freight and insurance charge is excluded.

(b) *Additions to price actually paid or payable.* (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(i) The packing costs incurred by the buyer with respect to the imported merchandise;

(ii) Any selling commission incurred by the buyer with respect to the imported merchandise;

(iii) The value, apportioned as appropriate, of any assist;

(iv) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(v) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

(2) The price actually paid or payable for imported merchandise will be increased by the amounts attributable to the items (and no others) described in subsections (i) through (v) to the extent that each amount is not otherwise included within the price actually paid or payable, and is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in this section, the transaction value will be treated as one that cannot be determined.

(c) *Sufficiency of information.*—Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

Interpretative note.—A royalty is paid on the basis of the price in a sale in the United States of a gallon of a particular product imported by the pound and transformed into a solution after importation. If the royalty is based partially on the imported merchandise and partially on other factors which have nothing to do with the imported merchandise (such as if the imported merchandise is mixed with domestic ingredients and is no longer separately identifiable, or if the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported merchandise and can be readily quantified, an addition to the price actually paid or payable will be made.

(d) *Assist.*—If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the district director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

(1) If the assist consists of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. If the assist has been used previously by the buyer, regardless of whether

it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

Example 1.—A U.S. importer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the merchandise. The U.S. importer bought the designs from an engineering company in the United States for submission to his foreign supplier.

Should the appraised value of the merchandise include the value of the assist?

No; design work undertaken in the United States is not to be included in dutiable value.

Example 2.—A U.S. importer supplied molds free of charge to the foreign shipper. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the value of the molds?

Yes. It is an addition required to be made to transaction value.

(e) *Apportionment.*—The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (1) the first shipment, if the importer wishes to pay duty on the entire value at once, (2) the number of units produced up to the time of the first shipment, or (3) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

Interpretative note.—An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced

4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, or 10,000 units.

(f) *Royalties or license fees.*—Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license fees paid to third parties for use in the United States, of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the United States, and (2) to whom and under what circumstances they were paid. Payments made by the buyer for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the United States.

Example.—A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the United States.

Is the license fee part of the appraised value?

No. The license fee is not a condition of the sale of the imported merchandise for export to the United States.

(g) *Proceeds of subsequent resale.*—Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller which do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

Example.—A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the United States, the buyer agrees to pay the seller initially $1 per unit with an additional $1 per unit to be paid upon the sale of each unit in the United States. Assuming the resale price in the United States can be determined promptly, the transaction value of each unit would be $2. Otherwise, the transaction value could not be determined for want of sufficient information.

(h) *Right to reproduce.*—Charges for the right to reproduce the imported merchandise in the United States will not be added to the price actually paid or payable. The right to reproduce denotes that an

idea or an original work is incorporated in, or reflected by, the imported merchandise, and the right is reserved to reproduce that idea or work in other merchandise by using the imported merchandise. The concept of the right to reproduce relates only to the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of models and industrial drawings; model machines and prototypes; and plant and animal species.

Example.—The importer purchases a painting. By purchasing the painting, the owner possesses the right to resell, lease, or otherwise place it on display. Absent an agreement to the contrary, he does not possess the right to reproduce copies of the painting. Fees paid for the right to reproduce the painting would not be dutiable.

(i) *Exclusions from transaction value.*—The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in subsection (b):

(1) Any reasonable cost or charge that is incurred for—

(i) The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) The transportation of the merchandise after its importation.

(2) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable.

Example.—A foreign shipper sells a piece of equipment to a U.S. buyer. The total contract price for the equipment includes technical assistance in the United States. The equipment cannot be purchased without the technical assistance, but the contract provides a breakdown of costs.

Should the appraised value include the technical assistance?

No; transaction value does not include any reasonable costs for construction, erection, assembly, maintenance of, or technical assistance, for the imported merchandise after its importation into the United States, the cost of which can be accurately identified as being separate from the price actually paid or payable for the merchandise to which they relate.

(j) *Limitations on use of transaction value.* (1) *In general.*—The transaction value of imported merchandise will be the appraised value only if—

(i) There are no restrictions on the disposition or use of the imported merchandise by the buyer, other than restrictions which are imposed or required by law, limit the geographical area in which the merchan-

dise may be resold, or do not affect substantially the value of the merchandise;

(ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined;

(iii) No part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under subsection (b)(1)(v); and

(iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

(2) *Related person transactions.* (i) The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of sale indicates that their relationship did not influence the price actually paid or payable, or if the transaction value of the imported merchandise closely approximates—

(A) The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

(B) The deductive value or computed value of identical merchandise, or of similar merchandise; or

(C) The transaction value as determined in sales for exportation to the United States to unrelated buyers of merchandise that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced, except that no two sales to unrelated buyers may be used for comparison unless the sellers are unrelated; and

(D) Each value referred to in subsections (A) (B), and (C) above that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(ii) In applying the values used for comparison, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the buyer or otherwise available to Customs and if the differences relate to—

(A) Commercial levels;

(B) Quantity levels;

(C) The costs, commissions, values, fees, and proceeds described in subsection (b) of this section; and

(D) The costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(k) *Restrictions and conditions on sale.*—(1) A restriction placed on the buyer of imported merchandise that does not affect substantially

its value will not prevent transaction value from being accepted as the appraised value.

Interpretative note.—A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

(2) The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

Interpretative note 1.—The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.

Interpretative note 2.—The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.

Interpretative note 3.—The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

(1) *Related buyer and seller.* (1) *Validation of transaction.*—The district director shall not disregard a transaction value solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value, using the procedures contained in section 152.103(j) (2), may not be necessary.

Interpretative note 1.—Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this contex Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.

Interpretative note 2.—If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were

not related, this will demonstrate that the price has not been influenced by the relationship, and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price has not been influenced by the relationship.

Interpretative note 3.—If it is shown that the price is adequate to insure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis) in sales of merchandise of the same class or kind, this would demonstrate that the price had not been influenced.

Example.—A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship. Similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.

How should the merchandise be appraised?

Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the price actually paid or payable.

(2) *Test values.*—(i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value closely approximates any one of the test values provided in section 152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value are:

(A) The nature of the imported merchandise and the industry,

(B) The season in which the merchandise is imported,

(C) Whether the difference in value is commercially significant, and

(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.

(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a larger difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value "closely approximates" another value. The same approach will be taken if Customs considers

a transaction value that is higher than any of the enumerated test values as will be taken if the transaction value is lower than any of the test values.

Example.—In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate 100, a transaction value of 97 likewise would closely approximate 100.

(iii) If one of the test values provided in section 152.103(j)(2)(i) has been found to be appropriate, the district director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the district director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not require the importer to demonstrate that the test value is appropriate.

(m) *Rejection of transaction value.*—When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the district director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in part 177 of this chapter, or any other Customs procedures.

152.104 Transaction value of identical merchandise and similar merchandise

(a) *General.*—The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under sec. 152.103 but adjusted under par. (e) of this section) of imported merchandise that is—

(1) With respect to the merchandise being appraised, either identical merchandise or similar merchandise; and

(2) Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(b) *Identical merchandise.*—Minor differences in appearance will not preclude otherwise conforming merchandise from being considered identical. See section 152.102(d).

(c) *Similar merchandise.*—The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether merchandise is similar. See section 152.102(i).

(d) *Commercial level and quantity.*—Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially

the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on sufficient information. See section 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.

(e) *Adjustments.*—Adjustments for identical merchandise or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increase or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.

Interpretative note.—If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a Customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

152.105 Deductive value

(a) *Merchandise concerned.*—For the purposes of deductive value, merchandise concerned means the merchandise being appraised, identical merchandise, or similar merchandise.

(b) *Merchandise of the same class or kind.*—For the purposes of deductive value, merchandise of the same class or kind includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(c) *Prices.*—The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under subsec. (d)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(1) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(2) If the merchandise concerned is sold in the condition as imported

but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(3) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This provision will apply to appraisement of merchandise only if the importer so elects at the time of filing the entry summary.

(d) *Deductions from price.*—The price determined under subsection (c) will be reduced by an amount equal to—

(1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(2) The actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(3) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the merchandise concerned from the place of importation to the place of delivery in the United States, if those costs are not included as a general expense under subsection (1);

(4) The Customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable; and

(5) But only in the case of price determined under subsection (c) (3), the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of that processing.

(e) *Profit and general expenses; special rules.*—(1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from

sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

(2) In determining deductions for commissions and usual profit and general expenses, sales in the United States of the narrowest group or range of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.

(f) *Packing costs.*—The price determined under subsection (c) will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

(g) *Assists.*—For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

(h) *Unit price in greatest aggregate quantity.*—The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the total volume sold at any other unit price.

Interpretative note 1.—Merchandise is sold to an unrelated person from a price list which grants favorable unit prices for purchases made in larger quantities:

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 to 10 units	$100	10 sales of 5 units	65
		5 sales of 3 units	
11 to 25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is $90.

Interpretative note 2.—Two sales to unrelated persons occur: In the first sale, 500 units are sold at a price of $95 each; in the second sale, 400 units are sold at a price of $90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is $95.

Interpretative note 3.—Various quantities are sold to unrelated persons at various prices:

(a) *Sales*—

Sale quantity:	Unit price
40 units	$100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) *Totals.*—

Total quantity sold:	Unit price
65	$90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is $90.

(i) *Further processing.* (1) *Quantified data.*—If merchandise has undergone further processing after its importation into the United States and the importer elects the method specified in subsection (c)(3), deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.

(2) *Loss of identity.*—If the imported merchandise loses its identity as a result of further processing, the method specified in subsection (c)(3) will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the United States, the use of subsection (c)(3) will be unjustified. The district director shall review each case involving these issues on its merits.

Example.—A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated person. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the United States within 180 days of the date of importation. No assists from

the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed.

How should the merchandise be appraised?

The merchandise should be appraised under deductive value with allowances for profit and general expenses, freight and insurance, duties and taxes, and the cost of processing.

152.106 Computed value

(a) *Elements.*—The computed value of imported merchandise is the sum of—

(1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(3) Any assist, if its value is not included under subsection (1) or (2); and

(4) The packing costs.

(b) *Special rules.*—(1) The cost or value of materials under subsection (a)(1) will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

(2) The amount for profit and general expenses under subsection (a)(2) will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. In that case, the amount under subsection (a)(2) will be based on the usual profit and general expenses of such producers in those sales, as determined from sufficient information. See section 152.102(j).

(c) *Profit and general expenses.*—The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

Interpretative note 1.—A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a

low profit on sales of the imported merchandise because of peculiar commercial circumstance, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

Interpretative note 2.—Producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) *Assists and packing costs.*—Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) *Merchandise of same class or kind.*—Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised

Example.—A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the United States within 180 days of the date of importation. No assists

from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the United States is known.

How should the merchandise be appraised?

The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.

(f) *Availability of information.* (1) It will be presumed that the computed value of the imported merchandise cannot be determined if—

(i) The importer is unable to provide required computed value information within a reasonable time, and/or

(ii) The foreign producer refuses to provide, or is legally prevented from providing, that information.

(2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the district director shall inform the importer, upon written request, of:

(i) The source of the information,

(ii) The data used, and

(iii) The calculation based upon the specified data if not contrary to domestic law regarding disclosure of information. See also section 152.101(d).

152.107 Value if other values cannot be determined or used

(a) *Reasonable adjustments.*—If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in sections 152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the United States will be used.

(b) *Identical merchandise or similar merchandise.*—The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.

(c) *Deductive value.*—The 90 days requirement for the sale of mer-

chandise referred to in section 152.105(c) may be administered flexibly.

152.108 Unacceptable bases of appraisement.

For the purposes of this subpart, imported merchandise may not be appraised on the basis of—

(1) The selling price in the United States of merchandise produced in the United States;

(2) A system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(3) The price of merchandise in the domestic market of the country of exportation;

(4) A cost of production, other than a value determined under section 152.106 for merchandise that is identical merchandise, or similar merchandise, to the merchandise being appraised;

(5) The price of merchandise for export to a country other than the United States;

(6) Minimum values for appraisement; or

(7) arbitrary or fictitious values.

R. E. CHASEN
Commissioner of Customs.

Approved: March 20, 1980.

JOHN P. SIMPSON
(for Assistant Secretary of the Treasury).

[Published in the Federal Register, Mar. 31, 1980 (45 F.R. 20912)]

Performance Review Boards; Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executive employees' performance and make recommendations regarding performance and performance awards.

DATE: The Performance Review Boards become effective on March 28, 1980.

FOR FURTHER INFORMATION CONTACT: Alexander Faison, Director, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue NW., room 3417, Washington, D.C.; 202–566–5563.

SUPPLEMENTARY INFORMATION: There are two Performance Review Boards in the U.S. Customs Service as follows:

1. The Performance Review Board to review senior executives rated by the Commissioner and Deputy Commissioner (i.e., the Assistant to the Commissioner, the Special Assistants to the Commissioner, the Assistant Commissioners, and Regional Commissioners) is composed of the following members:

George C. Corcoran, Jr., Assistant Commissioner, Office of Management Integrity, U.S. Customs Service.

Arthur D. Kallen, Director, Office of Budget and Program Analysis, Department of the Treasury.

John Mangels, Director, Office of Operations, Department of the Treasury.

William Rhodes, Director, Office of Management and Organization, Department of the Treasury.

Myron Weinstein, Deputy Director, U.S. Secret Service.

2. The Performance Review Board to review all other Senior Executives is composed of the following members:

Charles C. Hackett, Assistant Commissioner (Border Operations) U.S. Customs Service.

Alfred R. De Angelus, Assistant Commissioner (Commercial Operations), U.S. Customs Service.

Jack T. Lacy, Comptroller, U.S. Customs Service.

William J. Griffin, Regional Commissioner, U.S. Customs Service, 100 Summer Street, Boston, Mass. 02110.

Dennis T. Snyder, Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, N.Y. 10048.

John A. Hurley, Regional Commissioner, U.S. Customs Service, 40 South Gay Street, Baltimore, Md. 21202.

Robert N. Battard, Regional Commissioner, U.S. Customs Service, 99 SE. Fifth Street, Miami, Fla. 33131.

Peter J. Dispenzirie, Acting Regional Commissioner, U.S. Customs Service, 1440 Canal Street, New Orleans, La. 70112.

Donald Kelly, Acting Regional Commissioner, U.S. Customs Service, 500 Dallas Street, Houston, Tex. 77002.

Albert G. Bergesen, Regional Commissioner, U.S. Customs Service, 300 North Los Angeles Street, Los Angeles, Calif. 90053.

Edward M. Ellis, Acting Regional Commissioner, U.S. Customs Service, 211 Main Street, San Francisco, Calif. 94105.

Eugene H. Mach, Acting Regional Commissioner, U.S. Customs Service, 55 East Monroe Street, Chicago, Ill. 60603.

Dated: March 24, 1980.

ROBERT E. CHASEN,
Commissioner of Customs.

(521741)

American Manufacturer's Petition

Extension of time for comments concerning an American manufacturer's petition to reclassify certain footwear known as moon boots

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time permitted for the submission of comments in response to a recent American manufacturer's petition to the Customs Service to reclassify certain footwear known as moon boots. This extension will permit the preparation and submission of more detailed comments by interested members of the public.

DATES: Comments must be received on or before April 30, 1980.

ADDRESS: Comments, preferably in triplicate, should be addressed to the Commissioner of Customs, attention: Regulations and Research Division, room 2335, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8181.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 30, 1980, the Customs Service published in the Federal Register (45 F.R. 6881) a notice of receipt of an American manufacturer's petition, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that certain footwear known as moon boots be reclassified as other footwear which is over 50 percent by weight of rubber or plastics under item 700.60, Tariff Schedules of the United States (TSUS), or in the alternative, as other protective footwear under item 700.53, TSUS. It is currently the position of Customs that the particular moon boots in question, as well as footwear of the same class or kind, are classifiable as other footwear which is over 50 percent by weight of rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics under item 700.58, TSUS.

COMMENTS

Comments concerning the American manufacturer's petition were to have been received on or before March 31, 1980. However, the Customs Service has been requested to extend the period of time for the submission of comments in order to allow additional time for the

preparation of a response to the American manufacturer's petition. As a result, the period of time for the submission of comments is extended to April 30, 1980.

Dated: March 19, 1980.

SALVATORE E. CARAMAGNO
(For the Director, Office of
Regulations and Rulings).

[Published in the Federal Register, Mar. 25, 1980 (45 F.R. 19420)]

(TMK–2–RRUEE)

Notice of Application for Recordation of Trade Name Houseworks, Ltd.

Application has been filed pursuant to section 133.12, Customs Regulations (19 C.F.R. 133.12), for recordation under section 42 of the act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Houseworks, Ltd. used by Houseworks, Ltd., a corporation organized under the laws of the State of Georgia, located at 3937 Oakcliff Industrial Court, Atlanta, Ga. 30340.

The application states that the trade name is associated with dollhouse accessories and miniature furniture.

The application states further that various firms located in Canada, England, West Germany, France, and Switzerland are authorized to sell merchandise bearing the trade name. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Washington, D.C. 20229, in time to be received not later than 30 days from the date of publication of this notice in the Federal Register.

Notice of the action taken on the application for recordation of the trade name will be published in the Federal Register.

Dated: March 19, 1980.

SALVATORE E. CARAMAGNO,
Acting Director, Office of
Regulations and Rulings.

Decisions of the United States Customs Court

Customs Decision

(C.D. 4847)

RSMC INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 77-4-00572

[Judgment for defendant.]

(Decided March 12, 1980)

Doherty and Melahn (*William E. Melahn* at the trial and on the briefs) for the plaintiff.

Alice Daniel, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney

in Charge, Field Office for Customs Litigation (*Saul Davis* at the trial and on the brief), for the defendant.

MALETZ, Judge: The problem in this case is to determine the proper tariff classifications of items invoiced as "E–22 champagne goblets" that were exported from Spain and entered at the port of Boston in April and May 1973.

The merchandise was classified by Customs under item 653.75, TSUS, as articles of metal, coated or plated with gold, and assessed duty at the rate of 20 percent ad valorem. Plaintiff claims the merchandise is properly classifiable under item 653.80, TSUS, as articles of metal, coated or plated with silver, dutiable at the lesser rate of 8.5 percent ad valorem.

THE STATUTES

Schedule 6, part 3, subpart F, TSUS

	Articles not specially provided for of a type used for household, table, or kitchen use; * * * all the foregoing and parts thereof, of metal:	
* * * * * * *		
Classified under:		
653.75	Coated or plated with gold	20%
Claimed under:		
653.80	Coated or plated with silver	8.5%

General interpretative rules:

10(c) An imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:

* * * * * * *

(ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading;

10(d) If two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest, and, should the highest original statutory rate be applicable to two or more of such descriptions, the article shall be subject to duty under that one of such descriptions which first appears in the schedules; * * *

QUESTION PRESENTED

The question to be decided is whether the imported goblets are classifiable as articles coated or plated with gold or as articles coated or plated with silver.

THE FACTS

The goblets in question are 6½ inches in height, have a bowl diameter of 4 inches, and are silver in color save for the interior of the bowl which

is gold in color. Each base goblet was formed out of an alloy that was then plated with nickel over the entire surface. The entire surface of the base goblet was then coated or plated with silver following which the inside of the bowl was coated or plated with gold.

The thickness of the gold layer averages 0.72 millionths of an inch, while the thickness of the silver layer averages 0.99 millionths of an inch. The weight of the gold layer is approximately 8 millionths of a pound, while the weight of the silver layer is approximately 17 millionths of a pound so that the silver weighs about twice as much as the gold. The total surface area of the gold layer is 16 square inches, while the total surface of the silver layer layer amounts to approximately 45 square inches. Hence, the goblet contains almost three times as much silver area as gold area. However, based on the average price of gold and silver in the United States in 1973, the gold portion of the goblet was worth 10 times as much as the silver portion.

In 1957, the Federal Trade Commission adopted a regulation prescribing trade practice rules governing the sales or offers for sale of jewelry articles. This regulation reads as follows (16 CFR 23.22):

> § *23.22 Misrepresentation as to gold content*
>
> (a) It is an unfair trade practice to sell or offer for sale any industry product under any trade or product name or designation or other representation having the capacity and tendency or effect of deceiving purchasers or prospective purchasers thereof as to the presence of gold or gold alloy in the product, or as to the quantity or fineness of gold alloy, contained in the product, or as to the fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of any industry product or part thereof.
>
> (b) The following practices are among those to be regarded as inhibited by paragraph (a) of this section:
>
> * * * * * * *
>
> (5) Use of the term "gold electroplate," or "gold electroplated," as descriptive of any industry product or part thereof, unless such product or part is plated or coated with gold or a gold alloy and such plating or coating is of such karat fineness, thickness, and extent of surface coverage that the use of the term will not have the capacity and tendency of deceiving purchasers or prospective purchasers.
>
> * * * * * * *
>
> (c) Markings and descriptions of industry products or parts thereof will be considered as meeting the requirements of this section when in conformity with the following:
>
> * * * * * * *
>
> (3) An industry product or part thereof, all significant surfaces on which there has been affixed by an electrolytic process a coating or plating of gold, or of a gold alloy of not less than 10 carat fineness, the minimum thickness throughout of which is equivalent to 7 millionths of an inch of fine gold, may be marked

> or described as "gold electroplate" or "gold electroplated." When the coating or plating meets the minimum fineness, but not the minimum thickness, above specified, the marking or description may be "gold flashed " or "gold washed," * * *

With respect to the goblets here in issue, the thickness of the gold surface of the interior of the bowl, as noted before, is only 0.72 millionths of an inch and therefore is only 10 percent of the minimum 7 millionths of an inch thickness required by the FTC regulation before an article may be represented as "gold electroplate" or "gold electroplated." Because the thickness of the gold covering is only 0.72 millionths of an inch, the imported goblets may not under this FTC rule be represented to the public as "gold electroplated" but may be represented as "gold flashed" or "gold washed." In that circumstance, goblets such as those involved here were represented in 1973 by plaintiff for sale to the public as "silver plated toasting goblets * * * with gold color lining." Competitors of plaintiff advertised similar goblets variously as "toasting goblets * * * gold lined"; "toasting goblets * * * gilt lined";[1] or "silver goblets with gold flashed bowls."

In correspondence between plaintiff and its supplier in Spain during the period 1969–71, the imported goblets were consistently referred to as "gold plated." Also plaintiff's own inventory list described the importations as "champagne goblet goldplated interior." In addition, the goblets were referred to as "gold plated" by concerns engaged in electroplating them.

Opinion

With these facts in mind, there is no question that the imported goblets are coated or plated with gold within the common meaning of item 653.75. Indeed, the sole criterion used by our appellate court in determining whether an article is classifiable under a tariff provision requiring the article to be "plated with gold" was whether the article, in fact, contained a gold plating and whether the gold plating was more than an "insignificant" or "neglibible" portion of the article. *Saji & Kariya Co.* v. *United States*, 9 Ct. Cust. Appls. 78, T.D. 37945 (1919); *United States* v. *N. Shure Co.*, 21 CCPA 296, T.D. 46818 (1933); *Tuska* v. *United States*, 5 Ct. Cust. Appls. 506, T.D. 35153 (1915). And in the present case, there is no dispute that the imported goblet was coated or plated with gold on the inside of the bowl and that this gold plating was more than insignificant or neglibible.

Plaintiff argues, however, that the term "coated or plated with gold" has had by reason of adoption of a Federal Trade Commission

[1] Webster's Third International Dictionary (1963 ed.) defines the adjective "gilt" as "covered with gold or gilt." The noun "gilt" in turn is defined in Webster's as "gold, or that which resembles gold, laid on the surface of a thing."

regulation in 1957 a commercial designation different from its common meaning which precludes the articles here in issue from being classified as gold coated or plated.[2] Put otherwise, plaintiff's claim is (1) that the effect of the 1957 FTC regulation was to establish a commercial designation for gold coated or plated articles which prescribes a minimum thickness requirement that must be met before an article may be represented as gold coated or plated; and (2) that since the articles here in issue did not contain this minimum thickness, the articles are not classifiable as gold coated or plated.

It is, of course, basic that the common and commercial meaning of tariff terms are presumed to be the same and the party who asserts that a tariff term has a meaning in the trade and commerce of the United States which is different from its common meaning has the burden of proof. This rule of commercial designation "was intended to apply to cases where the trade designation is so universal and well understood that the Congress and all the trade are supposed to have been fully acquainted with the practice at the time the law was enacted." *Jas. Akeroyd & Co.* v. *United States*, 15 Ct. Cust. Appls. 440, 443, T.D. 42641 (1928). Thus, "(c)ommercial designation must be the result of established usage in commerce and trade and must be definite, uniform, and general, and not local, partial, or personal. * * * Before the plain understanding of a term can be deviated from, it must be shown by plenary proof to have a different import in trade and commerce which is fully and completely understood and accepted throughout the United States by all those dealing wholesale in that class of goods. * * *." Sturm, *A Manual of Customs Law* (1974), page 210.

In this setting, the court concludes for the reasons that follow that plaintiff's reliance on the FTC regulation is misplaced, and that in any event plaintiff failed to prove a commercial designation that would preclude classification under item 653.75.

First, there is no indication anywhere in the legislative history of the TSUS, in general, or item 653.75 and its superior heading, in particular, which would disclose that Congress intended that the FTC regulation would be determinative of the scope of any provision in the TSUS. See, e.g., *A. N. Deringer, Inc.* v. *United States*, 63 CCPA 37, 42, C.A.D. 1161, 524 F. 2d 1215, 1220 (1975).

Second, the TSUS does not distinguish between "coated or plated with gold" and "coated or plated with silver" (items 653.75 and 653.80) except for the precious metal utilized. The FTC regulation,

[2] A descriptive term, as well as an eo nomine designation, in a tariff act is susceptible of proof of commercial designation unless it was the intent of Congress to restrict the meaning of the term used to its common meaning. *La Manna, Azema & Farnan* v. *United States*, 14 Ct. Cust. Appls. 289, 292, T.D. 41908 (1926); *American Express Co.* v. *United States*, 10 Ct. Cust. Appls. 275, 279, T.D. 38680 (1920); *United States* v. *Iwai & Co., Ltd.*, 29 CCPA 60, 62, C.A.D. 171 (1941).

on the other hand, distinguishes between silver plated articles and gold plated articles by prescribing a thickness requirement for gold plating and not prescribing a thickness requirement for silver plating. Clearly, Congress did not adopt the FTC provision regarding plating since the TSUS contains no thickness requirements for either gold or silver.

What is more, the fact that under the FTC regulation certain requirements must be met before articles may be offered as gold plated does not ipso facto establish a commercial designation for the terms gold coating or plating. Proof must still be presented by plaintiff to show that such requirements were fully and completely understood and accepted by all those dealing in wholesale in that class of goods and that such requirements were definite, uniform, and general. Plaintiff, however, has failed to satisfy its burden in this respect.

For one thing, the record is clear that the change mandated by the FTC regulation did not become definite, uniform, and general in the trade. For example, in the period immediately antedating the importations at issue, plaintiff itself and its foreign supplier consistently referred to the imported goblets as "gold plated." Also, the trade advertised goblets similar to those involved here as "silver goblets with gold flashed bowls" or as "toasting goblets * * * gilt lined"—and these are simply other ways of referring to the articles as coated with gold. Further, electroplaters within the trade have consistently referred to articles such as the ones involved here as "gold plated." Thus, in the last analysis, plaintiff has failed to prove a uniform and recognized commercial designation that precludes classification such as the importations at bar from the status of "coated or plated with gold."

Plaintiff next argues that the rule of "relative specificity," contained in General Interpretative Rule 10(c), controls the competition between item 653.75 (which covers articles coated or plated with gold), and item 653.80 (which covers articles coated or plated with silver), and that item 653.80 is more specific. However, for the reasons set out below, it is concluded that both provisions are equally specific and that General Interpretative Rule 10(d) therefore applies.

Under the rule of "relative specificity" of tariff provisions as contained in General Interpretative Rule 10(c), where there is competition between two or more tariff provisions for classification of a particular article, and both tariff provisions encompass that article, it is the provision whose requirements are more difficult to fulfill which controls classification. See *Humphreys* v. *United States*, 56 CCPA 67, 69, 71, C.A.D. 956, 407 F. 2d 417, 419, 420 (1969).

Clearly, the particular terms of the tariff provisions in issue are measured for relative specificity rather than the composition of the merchandise in issue. With this basic rule in mind, examination of

the two provisions involved (items 653.75 and 653.80) discloses that they are identical except for the particular precious metal used as the plating material. Therefore, it is apparent that General Interpretative Rule 10(c) does not resolve the classification issue since the requirements of both items 653.75 and 653.80 are equally difficult to fulfill.

Accordingly, General Interpretative Rule 10(d) controls for the reason that items 653.75 and 653.80, TSUS, are "equally applicable" to the imported goblets inasmuch as the goblets are "coated or plated" with both gold and silver.

In this circumstance, General Interpretative Rule 10(d) mandates classification under the provisions which contain the highest original statutory rate of duty (the col. 2 rate). And since item 653.75 applies the highest original statutory rate of duty (65 percent versus 50 percent for item 653.80), General Interpretative Rule 10(d) requires classification under item 653.75.

For the foregoing reasons, the classification under item 653.75 is affirmed and the action is hereby dismissed.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, *March 17, 1980.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/36	Rao, J. March 12, 1980	Imported Rug Associates, Ltd.	R58/10923, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	New York Rugs
R80/37	Rao, J. March 12, 1980	Imported Rug Associates, Ltd.	R64/3927, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/38	Rao, J. March 12, 1980	Imported Rug Associates, Ltd.	R64/4177, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R80/39	Rao, J. March 13, 1980	Imported Rug Associates, Ltd.	R63/986, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice pric s and appraised values	Agreed statement of facts	New York Rugs
R80/40	Watson, J. March 13, 1980	Ciba Chemical and Dye Company	R66/18301	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by cus-	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					toms officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R80/41	Watson, J. March 13, 1980	Ciba Chemical and Dye Company	R66/23888, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 33.4% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/42	Watson, J. March 13, 1980	Ciba Chemical and Dye Company	R67/9114	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.5% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R80/43	Watson, J. March 13, 1980	Ciba Chemical and Dye Company	R69/11527 etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 31.1% representing profit and general expenses usually made in U.S. on sales of dye-	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					stuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.32 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R80/44	Watson, J. March 13, 1980	Geigy Chemical Corporation	R66/16348, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.5% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/45	Watson, J. March 13, 1980	Geigy Chemical Corporation	R66/16980	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.7% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R80/46	Watson, J. March 13, 1980	Rohner Gehrig & Co., Inc.	R66/27833 etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R80/47	Watson, J. March 13, 1980	Rohner Gehrig & Co., Inc.	R66/28415	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 33.4% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through October 24, 1979, are available in microfiche format at a cost of $15.10 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: March 21, 1980.

JOHN T. ROTH,
Acting Director,
Regulations and Research Division.

Date of decision	File no.	Issue
2-15-80	104439	Vessels: Whether container numbers and container seal numbers are required to be listed on the outward foreign cargo declaration

Date of decision	File no.	Issue
3- 3-80	104449	Vessel repair: Whether duties on the cost of foreign repairs to an American vessel are remissible when the repairs were necessitated by the failure, due to metal fatigue, of the gooseneck pin of the jumbo boom
3- 3-80	104453	Vessel repair: Submission of evidence that repairs were necessitated by casualty
3- 3-80	104457	Aircraft: Treatment of aircraft as private or commercial for Customs purposes
2-29-80	610017	Enforcement: Administrative penalties for petty seizures of controlled substances
1-30-80	711256	Entry: Date of entry; date of deposit of entry and duty check versus date that duty check accepted by cashier
2-19-80	711431	Entry: Whether purchaser of imported aircraft is liable for unpaid duties
3- 5-80	711811	Country-of-origin marking: Knife handles
2-21-80	711921	Country-of-origin marking: Digital desk watches
3-11-80	712108	Country-of-origin marking: Potted plants
2-27-80	712344	Country-of-origin marking: Plastic lipstick holders
3- 3-80	712377	Country-of-origin marking: Watch movement parts
2-26-80	712409	Country-of-origin marking: Glow plugs imported in marked individual containers
10-26-79	060670	Classification: Erythobic acid; sodium erythorbate; malic acid (403.80, 429.12, 429.95)
2-19-80	060838	Classification: Openwork knit fabric (351.80, 352.80, 365.50)
2-19-80	060847	Classification: De-inking product (465.30)
2-19-80	060906	Classification: Fruits packed in liquor (146.24, 146.99, 147.29, 147.54, 148.28, 148.86, 148.98, 150.50)
2-15-80	060926	Classification: Wall covering (386.50, 389.62)
2-26-80	060998	Classification: Cork panels (220.20, 220.50)
2-19-80	061271	Classification: Spice rack (772.03, 772.15)
1-29-80	061729	Classification: Miniature village with lighting (256.90, 688.10)
2-15-80	061801	Classification: Capping board used in refining copper (688.40, 773.30)
3- 5-80	061840	Classification: Unfinished shoe style roller skates (734.90)
3- 5-80	061846	Classification: Raincoat with freehanging yokes (382.81)
3- 5-80	061848	Classification: Silk camisole with lace edging (382.05)
2-21-80	061935	Classification: Plain end oil well casing (610.39, 610.42)
1-18-80	062467	Classification: Tote bag (386.09)
2-22-80	062996	Classification: Sintered carbide blanks for use as tips on circular saws (649.53)
2-26-80	062682	Classification: Hog flooring (666.00)
2-14-80	062828	Classification: Duster (389.62, 772.15)
3-10-80	062863	Classification: Parts for hovercraft skirt (359.50, 774.25, 774.55)
2-14-80	062879	Classification: Self-propelled agricultural sprayer (662.45)

Date of decision	File no.	Issue
2–15–80	062931	Classification: Fabric for use as tubes in batteries (338.30)
2–15–80	062967	Classification: Tissue box cover (365.86, 367.55)
2–26–80	063406	Classification: Unfinished watch bracelet and watch bracelet tube ends and connector clips (740.35, 740.38, 740.80)
2–27–80	064001	Classification: Jacket with detachable down-filled lining (380.84, 748.40)
3– 5–80	064039	Classification: Carafe-type bottle; usual and ordinary container
2–19–80	064080	Classification: Silk panels (378.05, 806.20)
3–10–80	064152	Classification: Motocross pants (734.80, 735.20)
2–26–80	064167	Classification: Window shade spring roller (660.80)
2–14–80	064303	Classification: Vinyl mattress cover (772.35)
2–15–80	064334	Classification: Processed cod fish (110.47, 110.50, 110.55)
2–19–80	064340	Classification: Plastic profile shapes (771.55, 774.55)
3– 5–80	064408	Classification: Tents (386.50)
3– 5–80	064434	Classification: Cull-carrot animal feed (135.41, 135.42, 184.85)

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN AIRTIGHT CAST-IRON STOVES	Investigation No. 337–TA–69

Notice of Denial of Oriental Kingsworld Industrial Co., Ltd.'s Appeal to the Commission Under 19 CFR 210.60(b)

Having considered the administrative law judge's orders No. 14 and 16 in the above-captioned case, the application for review, and the oppositions of the complainants and the Commission investigative attorney under Commission rule 210.60(b), the Commission denies Oriental Kingsworld Industrial Co., Ltd.'s appeal from the ruling of the administrative law judge, and denies its February 19, 1980 request for oral argument on those issues. The notice of investigation in this case was published in the Federal Register on July 12, 1979. In its notice of institution the Commission stated that the scope of the investigation involved importations that violated section 337(a) by reason that such stoves are—

(a) violating Jotul's common law trademarks because such stoves are visually identical copies of Jotul's stoves;

(b) being passed off as Jotul's product;
(c) violating Jotul's registered U.S. trademarks; and
(d) being falsely advertised,

the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to restrain trade and commerce in the United States.

The Commission does not consider its institution of this investigation to have conclusively decided either the question of whether a U.S. industry exists in this instance or whether the alleged unfair acts are evidence of "restraints of trade" under section 337. Rather, the Commission considers its institution of this investigation to express a willingness to consider evidence on these issues, and therefore instructs the presiding officer to continue gathering all evidence obtainable regarding both the industry and restraint of trade issues.

By order of the Commission.

Issued: March 21, 1980.

KENNETH R. MASON,
Secretary.

(19 CFR 207.40)

Notice of Termination of Nine Countervailing Duty Investigations Concerning Frozen Boneless Beef From the European Communities

AGENCY: U.S. International Trade Commission.

ACTION: Termination of countervailing duty investigations under section 704 of the Tariff Act of 1930.

EFFECTIVE DATE: March 6, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Vera A. Libeau, Office of Investigations; telephone 202–523–0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(a)(1)(C), requires the Commission to conduct countervailing duty investigations in cases where the Commission receives the most current net subsidy information pertaining to any countervailing duty order in effect on January 1, 1980, applicable to frozen, boneless beef from the European Communities under T.D. 76–109. On February 5, 1980, the Commission received such information from the Department of Commerce with respect to the following countervailing duty orders:

Frozen boneless beef, provided for in tariff schedule item 106.10/
Belgium.

Frozen boneless beef, provided for in tariff schedule item 106.10/ Denmark.
Frozen boneless beef, provided for in tariff schedule 106.10/ Federal Republic of Germany.
Frozen boneless beef, provided for in tariff schedule item 106.10/ France.
Frozen boneless beef provided for in tariff schedule item 106.10/ Ireland.
Frozen boneless beef provided for in tariff schedule item 106.10/ Italy.
Frozen boneless beef provided for in tariff schedule item 106.10/ Luxembourg.
Frozen boneless beef provided for in tariff schedule item 106.10/ Netherlands.
Frozen boneless beef, provided for in tariff schedule item 106.10/ United Kingdom.

The Commission has received communications from the original petitioners for these countervailing duty orders—the American Farm Bureau Federation and the National Cattlemen's Association. In a letter dated February 21, 1980, the American Farm Bureau Federation informed the Commission that it had withdrawn from its status as a petitioner for these countervailing duty investigations in 1975. The National Cattlemen's Association requested that the Commission terminate those investigations under section 704 of the Tariff Act of 1930. This request was received on February 26, 1980.

Section 704 requires that all parties be notified of the termination. The receipt of these letters from the original petitioners prior to the formal institution of the investigations presents the Commission with a situation in which no persons have formally appeared as parties to these investigations. Section 704, however, does not require that the Commission formally institute proceedings in order that the original petitioners formally appear as parties to request termination of the investigations. For these reasons the Commission is acknowledging the information supplied by the American Farm Bureau Federation and granting the request of the National Cattlemen's Association by terminating these investigations.

In addition to publishing this notice in the Federal Register, the Commission is serving this notice on all persons who have written the agency in connection with the investigations and is notifying the Department of Commerce of its action in these cases.

By order of the Commission.

Issued: March 7, 1980.

KENNETH R. MASON,
Secretary.

Notice of Institution of Final Antidumping Investigation and Scheduling of Hearings, 731–TA–16 (Final): Melamine in Crystal Form, Provided for in TSUS Item 425.10, From the Netherlands

AGENCY: U.S. International Trade Commission.

ACTION: Institution of a final antidumping investigation under section 735(b) of the Tariff Act of 1930 to determine whether with respect to melamine in crystal form (provided for in TSUS item 425.10) from the Netherlands there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise allegedly sold or likely to be sold at less than fair value.

EFFECTIVE DATE: February 26, 1980.

FOR FURTHER INFORMATION CONTACT: John MacHatton, 202–523–0439, the supervisory investigator.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, section 735(b)(2), requires that the Commission make a final antidumping determination in cases where the administering authority has issued an affirmative preliminary determination under section 733(b) as to the question of less-than-fair-value sales. Accordingly, the Commission hereby gives notice that, effective as of February 26, 1980, it is instituting investigation No. 731–TA–16 (final) pursuant to section 735(b) of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and, particularly, subpart B thereof, effective January 1, 1980.

WRITTEN SUBMISSIONS: Any person may submit to the Commission by April 8, 1980 a written statement of information pertinent to the subject matter of this investigation. A signed original and 19 true copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential business data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

HEARING: The Commission has scheduled a hearing in this investigation beginning at 10 a.m., e.s.t. on April 11, 1980, in the hearing room, U.S. International Trade Commission Building. Parties wishing

to participate in the hearing should notify the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. A preliminary staff report will be available to all interested parties on March 25, 1980. Any person's prehearing statement must be filed by April 8, 1980. All parties who desire to appear at the hearing and make oral presentations must file prehearing statements. For further information consult the Commission's Rules of Practice and Procedure, part 207, subpart C (44 F.R. 76457), effective January 1, 1980.

By order of the Commission.

Issued: March 13, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN SKATEBOARDS AND PLATFORMS THEREFOR	Investigation No. 337–TA–37

Notice Concerning Commission Request for Written Comments and Information on Remedy, Bonding, and the Public Interest

BACKGROUND

On the basis of an amended complaint filed by Richard L. Stevenson pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), the U.S. International Trade Commission on November 4, 1977, instituted an investigation to determine whether there was a violation of section 337 in the unauthorized importation and sale of certain skateboards by reason of the alleged coverage of such skateboards by claims by U.S. Letters Patent 3,565,454, the effect or tendency of which was to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's investigation was published in the Federal Register of November 11, 1977 (42 F.R. 58792).

On November 13, 1978, the Commission ordered termination of its investigation based on the determination that there was no violation of section 337 because the relevant claims of the patent in controversy were for the purpose of section 337 invalid as obvious within the meaning of 35 U.S.C. 103. Notice of the Commission's order of termination was published in the Federal Register of November 16, 1978 (43 F.R. 53511).

On January 12, 1979, complainant Stevenson appealed the Commission's determination to the U.S. Court of Customs and Patent Appeals pursuant to 19 U.S.C. 1337(c). In a decision handed down on

December 20, 1979, the court reversed the Commission's determination that there was no violation of section 337, and remanded the case to the Commission for action consistent with the court's opinion.[1]

REQUEST FOR WRITTEN COMMENTS CONCERNING REMEDY, BONDING, AND THE PUBLIC INTEREST

Inasmuch as the U.S. Court of Customs and Patent Appeals has found the relevant claims of the patent in controversy to be valid, enforceable, and infringed for the purpose of section 337, and since the active parties to the Commission's investigation stipulated to the issues of importation, effect or tendency to destroy or substantially injure the domestic industry, and efficient and economic operation of the domestic industry, the Commission considers that a violation of section 337 has been established. Prior to final disposition of the investigation, the Commission requests parties to the investigation, interested agencies, public-interest groups, and any other interested members of the public to submit written comments and information concerning the remedy, bonding, and public interest aspects of the case. The original and 19 true copies of all written comments must be submitted within 30 days of the date this notice appears in the Federal Register, and should include a proposed remedy, a proposed determination of bonding, and a discussion of those proposals on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

By order of the Commission.

Issued: March 17, 1980.

KENNETH R. MASON,
Secretary.

Notice of Review of Certain Countervailing Duty Orders

Section 104(b) of the Trade Agreements Act of 1979 in pertinent part provides:

(b) OTHER COUNTERVAILING DUTY ORDERS.—

(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the Agreement, and

[1] *Stevenson* v. *U.S. International Trade Commission et al.*, Appeal No. 79-12, decided Dec. 20, 1979. Petition or rehearing denied Feb. 28, 1980.

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—

(i) would be materially injured, or

(ii) would be threatened with material injury, or

(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty if the order were to be revoked.

It is the intention of the Commission to establish a schedule on or about April 30, 1980, for the conduct of investigations pursuant to section 104(b) encompassing requests for such investigations that have been received by March 28, 1980. In accordance with section 207.31 of the Commission's Rules of Practice and Procedure, among the factors considered by the Commission for establishing priorities of institution among such requests when the work before the Commission is such as to make immediate investigation in such cases impractical are:

(a) The trade interests of the United States;

(b) The length of time a countervailing duty order has been in effect (longest first);

(c) The volume of trade of the product in question; and

(d) The appropriateness of consolidation of investigations relating to like products.

Additional investigations, requests for which are received after March 28, 1980, and before December 31, 1982, will be scheduled at later dates.

By order of the Commission.

Issued: March 11, 1980.

KENNETH R. MASON,
Secretary.

(19 CFR 207.40)

Investigation No. 701–TA–8 (Final)

FIREARMS FROM BRAZIL

Notice of Termination of Investigation and Cancellation of Hearing

AGENCY: U.S. International Trade Commission.

ACTION: In view of the withdrawal by both petitioners of the petition upon which investigation No. 701–TA–8 was instituted, the Commission hereby terminates such investigation pursuant to section 704(a) of the Trade Act of 1930.

EFFECTIVE DATE: March 14, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Cates, Office of Investigations; telephone 202–523–0368.

SUPPLMENTARY INFORMATION: By notice issued January 10, 1980, and published in the Federal Register (45 F.R. 3400, January 17, 1980), the Commission instituted the subject investigation to determine whether with respect to the articles involved an industry, in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the subsidized imported merchandise. A public hearing was scheduled, on a tentative basis, to be held at the International Trade Commission Building, on April 5, 1980

Section 704(a) of the Tariff Act of 1930 permits the termination of a countervailing duty investigation after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. Pursuant to section 704(a) of the act, however, the Commission may not terminate an investigation before a preliminary determination is made by the Department of Commerce under section 703(b) of the act. In the present investigation, the administering authority (at that time the Department of the Treasury) made an affirmative preliminary determination—44 F.R. 53597, September 14, 1979—and both petitioners have withdrawn the petition on which the present investigation was instituted.

The requirements of section 704(a) having been satisfied, the Commission grants the request to terminate the investigation. In addition to this notice, the Commission is notifying the Department of Commerce and both petitioners of this action.

By order of the Commission.

Issued: March 14, 1980.

KENNETH R. MASON,
Secretary.

(19 CFR 207.40)

Investigation No. 701–TA–10 (Final)

FERROALLOYS FROM BRAZIL

Notice of Termination of Investigation and Cancellation of Hearing

AGENCY: U.S. International Trade Commission.

ACTION: In view of the withdrawal by the petitioners of the petition upon the basis of which investigation No. 701–TA–10 was initiated, the Commission hereby terminates such investigation pursuant to section 704(a) of the Trade Act of 1930.

EFFECTIVE DATE: March 14, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Leahy, Office of Investigations; telephone 202–523–1369.

SUPPLEMENTARY INFORMATION: By notice issued January 10, 1980, and published in the Federal Register (45 F.R. 3400 (January 17, 1980)), the Commission instituted the subject investigation to determine whether with respect to the articles involved an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the subsidized imported merchandise. A public hearing was scheduled, on a tentative basis, to be held at the International Trade Commission Building, on April 8, 1980.

The legal authority for a request to withdraw a petition for a countervailing duty investigation and the legal authority for the Commission to terminate an investigation in response to a request to withdraw the petition are found in section 704 of the Tariff Act of 1930. The only restriction on the Commission's authority to terminate is that all parties to the investigation must be notified of the termination. In the instant case no requests for appearances before the Commission have been received. For these reasons the Commission is granting the request and terminating this investigation. In addition to notifying interested persons who have not appeared before the agency, the Commission is notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: March 14, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN PLASTIC BOUQUET HOLDERS	Investigation No. 337–TA–80

Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: March 11, 1980.

DONALD K. DUVALL,
Chief Administrative Law Judge.

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